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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,585	03/20/2006	Andreas Spechtler	285783US8X PCT	3391
72458	7590	04/13/2009	EXAMINER	
REALNETWORKS, INC. C/O STOEL RIVES LLP 201. S MAIN STREET, SUITE 1100 SALT LAKE CITY, UT 84111			FEATHERSTONE, MARK D	
		ART UNIT	PAPER NUMBER	
		2423		
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		04/13/2009	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/572,585	SPECHTLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MARK D. FEATHERSTONE	2423	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 February 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 19-28,30-34 and 36-40 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 19-28, 30-34, and 36-40 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/06/2009 has been entered.

### ***Amendment***

2. Response to Amendment filed 02/06/2009. Claims 19, 21, 28, 30-31, 36, and 39-40 have been amended. Claim 29 has been canceled. Claims 19-28, 30-34, and 36-40 are pending.

### ***Response to Arguments***

3. Applicant's arguments, see pages 10-12 of applicant's arguments, filed 02/06/2009, with respect to the 35 USC § 112 rejection of claim 37 have been fully considered and are persuasive. Therefore, this rejection has been withdrawn.

Applicant's arguments with respect to claims 19-28, 30-34, and 36-40 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19, 21, 23, 25-28, 32-34, and 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt, US PG Pub # 20030221541, hereinafter Platt, in view of Sullivan et al, US Patent # 6593973, hereinafter Sullivan.

With regard to claim 19, Platt discloses a content output device, comprising:

a media player unit (figure 1, item 108) adapted to access a media stream comprising a first sequence of content items continuously communicated from a first media source and to provide a first content item of said first sequence of content items as an output (figure 1, item 104 playlist generator and paragraph [0030]; the system receives seed media or items and generates a playlist according to the seed items and the media database without requiring a user to manually create a playlist which is delivered to the media player 108), wherein said media player unit is further adapted to receive user feedback for said first content item, and in response to receiving negative user feedback, indicating that a user dislikes said first content item (paragraph [0032]; a user responds to a seed item (which is content item of the playlist) by indicating a like or a dislike):

send a request to said first media source to modify said media stream received from said first media source by replacing said first sequence of content

items in said media stream with a second sequence of content items to be continuously communicated from said first media source (paragraph [0034]; the playlist generator will generate a second playlist of media and sort the playlist based on user preference), said second sequence of content items selected based on said negative user feedback (paragraph [0034]; the second playlist generated is based on the user feedback, and the more a user likes an item, the higher on the playlist the item is located), said request associated with a delay time during which said second sequence of content items is not available for output by said media player unit (inherently, when the playlist generator is generating the second playlist based on feedback from the first playlist and seed items, the playlist it is not available for the period of time of generation);

Platt does not disclose accessing at least one second content item from at least one second media source, wherein said at least one second content item is available in less than said delay time;

replacing said first content item with said at least one second content item as said output during said delay time for which said second sequence of content items is not available, and after said delay time, replace said at least one second content item with at least a third content item from said second sequence of content items as said output

In an analogous art, Sullivan discloses an apparatus for providing information in video transitions. In Figure 4, and column 5, lines 12-40, Sullivan discloses receiving (step 414) and storing (step 416) a transition video. When a

transition is detected (step 418), the transition video is overlayed during transition (step 426), until video from second source is ready (step 428).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of Sullivan to store a video on the device of Platt to be played during a transition by the first media player until the requested video from the second media player is ready to be played, to avoid a transition where no media content is played. The combined system would play the transition video while the playlist generator produced the second playlist, and then play the second playlist when it was distributed to the media player.

With regard to claim 21, Platt in view of Sullivan discloses the content output device according to claim 19. Platt further discloses wherein said first media source is located outside of said content device and is adapted to provide said first and second sequences of content items as media streams to said media player unit (Figure 1, playlist generator 104 and media player 108 are separate entities; paragraph [0035], the media player receives the playlist from the playlist generator).

With regard to claim 23, Platt in view of Sullivan discloses the content output device of according to claim 21. Platt further discloses wherein said first media source is adapted to choose said second sequence of content items to be provided in dependence on said negative user feedback on said first content item (paragraph [0040]; a user can choose to remove a track from the playlist, and

additional tracks that are similar will also be removed, causing the playlist to be regenerated with the undesirable tracks removed).

With regard to claim 25, Platt in view of Sullivan discloses the content output device according to claim 19. Platt further discloses wherein said second media source is adapted to load or download said second content items from a remote location (figure 1, media player 108 remote from playlist generator 104; figure 16, clients 1610 downloads information from server via communications framework 1650).

With regard to claim 26, Platt in view of Sullivan discloses the content output device according to claim 25. Platt further discloses wherein at least one second content item is a jingle (paragraph [0031]; Platt describes media content that can be sent to the media player as audio or songs, which can be characterized as a jingle).

With regard to claim 27, Platt in view of Sullivan discloses the content output device according to claim 19. Platt further discloses wherein the content output device is adapted to provide said second content items, when provided to a user of the content output device, from a prepared media file (paragraph [paragraph [0035]]; the media player receives the playlist (which contains a reference to a filename or URL) and plays the items for the user).

Claim 28 is the method corresponding to system claim 19, and is analyzed and rejected accordingly.

Claims 32-34 are the method corresponding to system claims 25-27, and are analyzed and rejected accordingly.

Claim 36 is the computer-readable medium to invoke the steps of method claim 28, and is analyzed and rejected accordingly.

With regard to claim 37, Platt further discloses wherein said second sequence is a continuation of said first sequence (paragraph [0040]; a user can choose to remove a track from the playlist, and additional tracks that are similar will also be removed, causing the playlist to be regenerated with the undesirable tracks removed; therefore the newly generated list is a continuation of the previous list with the undesired track removed).

With regard to claim 38, Platt in view of Sullivan discloses the content output device according to claim 19. Platt further discloses wherein said media player comprises a single media player adapted to access both said first media source and said second media source (figure 1, item 108, the single media player of Platt can receive media from the playlist generator and form the media database, corresponding to two sources).

With regard to claim 39, Platt in view of Sullivan discloses the content output device according to claim 19. Sullivan further discloses wherein said media player is adapted to load or download said second content items from said second media source before sending said request to said first media source for said second sequence of content items (Figure 4, step 414, the

transition video is received and stored at step 416, before a transition occurs at step 418). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to download the transition media prior to the time of transition, so that it is immediately available during the transition, and there is no period of time when no media is presented to the user.

With regard to claim 40, Platt in view of Sullivan discloses the content output device according to claim 19. Sullivan further discloses wherein said media player is adapted to directly access said second content items such that said media player loads or downloads said second content items from said second media source in substantially real-time (Figure 4 and column 5, lines 6-12; Sullivan discloses that the transition video is downloaded for retrieval during a transition, corresponding to directly accessing the content, vice downloading it when it is needed; the act of downloading inherently occurs in real-time).

6. Claims 20, 22, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt, in view of Sullivan, in further view of Smith, US PG Pub # 20020133247, hereinafter Smith.

With regard to claims 20 and 22, Platt in view of Sullivan discloses the content output device according to claim 19, however fails to disclose wherein said media player unit comprises a first media player having access to said first and second sequences of content items from said first media source and a second media player having access to said second content items from said second media source. In an analogous art, Smith discloses a system to

seamlessly switch between content streams when a request for a second stream is detected. Particularly, in paragraph [0013], Smith discloses an embodiment in which there are two media players that each receive a different content stream. As described in paragraph [0034]; the media streams (both first and second) can be buffered in order to seamlessly play the streams without interruption. The first stream continues to play until the second stream is buffered enough to allow a seamless transition. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Platt in view of Sullivan with the teaching of two media players in the system of Smith. The combined system, as taught by Smith would allow more seamless transitions between streams by preparing a second stream to play while a first stream is still playing.

Claim 30 is the method corresponding to system claim 22, and is analyzed and rejected accordingly.

7. Claims 24 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt, in view of Sullivan, in further view of Szybiak et al, US Patent # 7023488, hereinafter Szybiak.

With regard to claim 24, Platt in view of Sullivan discloses the content output device according to claim 21, however does not disclose wherein said media player unit is adapted such that said first content item which is provided by said first media source and which is currently output is fadeable out in response to said negative user feedback.

However, Szybiak discloses transitioning between sequences of digital information and further discloses the ability to fade out one stream during a transition (column 4, lines 6-12 Szybiak discloses fading out an audio stream). Accordingly, it would have been obvious to one of ordinary skill in the art combine the teaching of Szybiak to fade out the current output when the user decides to output another media content in the system of Platt in view of Sullivan, to provide a smooth transition between content vice an abrupt transition from one content to another, as is well-known in the art.

Claim 31 is the method corresponding to system claim 24, and is analyzed and rejected accordingly.

### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK D. FEATHERSTONE whose telephone number is (571)270-3750. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F US Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on (571) 272-7296. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E-Signed

/Mark Featherstone/ - Assistant Examiner

/Andrew Y Koenig/  
Supervisory Patent Examiner, Art Unit 2423